

Joshua Tauberer
President
GovTrack.us
tauberer@govtrack.us

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Bipartisan working group to draft proposed
regulations governing House Members,
officers, and employees' outside positions
House Committee on Ethics
1015 Longworth House Office Building
Washington, DC 20515

Re: Recommendations regarding conflicts of interest in the House

To whom it may concern,

H.Res. 6 created a new clause in the House of Representatives Code of Conduct effective January 1, 2020 that will prohibit representatives, officers, and employees of the House from serving “as an officer or director of any public company.” The resolution also directs the committee to develop regulations addressing prohibited service and positions that could lead to conflicts of interest. On June 26, the House Committee on Ethics solicited outside comments on this subject.¹

My organization’s mission is to provide the general public with the information needed to be an active participant in government. Our website www.GovTrack.us serves nearly 10 million Americans each year. We see that the perception by our users of conflicts of interest of Members of Congress is widespread and harmful to a healthy legislative branch. The American public expects its representatives — through the Committee — to address alleged conflicts of interest in a prompt and transparent manner. There are innumerable ways Members can have, or create the perception of, a conflict of interest, many of which are beyond the scope of the Committee or any investigative body. Consequently, we urge the Committee to be aggressive in investigating and sanctioning Members when a violation has occurred within the Committee’s small purview.

In 2018, GovTrack compiled its Congressional Misconduct Database², the first public-access, digital database of all congressional ethics and related investigations of Members of Congress from 1789 to the present. Using this database, we found eight recent cases involving a potential conflict of interest due to a position in or an interest in an outside organization. In the majority of those cases the Member was either absolved or was found to have violated House rules but faced no adverse consequence.

In light of the H.Res. 6’s directive to strengthen rules regarding conflicts, and based on information gleaned from our database, we offer the following recommendations:

- A Member’s personal involvement in legislative minutia has been used as a necessary condition to establish a conflict of interest in past ethics cases. This does not comport with what a reasonable person would consider a conflict of interest. In developing new regulations,

1 <https://ethics.house.gov/press-release/statement-chairman-and-ranking-member-committee-ethics-regarding-establishment-worki-0>

2 <https://www.govtrack.us/misconduct>

the Committee should consider a conflict or improper perception of a conflict to exist when any action taken on behalf of the Member poses a conflict, without regard to who took the action or whether the action was done with the knowledge of the Member.

- When a conflict of interest rises to the level of hundreds of thousands or millions of dollars, a large sum indeed in the eyes of most Americans, the buck must stop with the Member. The Member must be held accountable for the official actions taken by their office that conflict with a financial interest, either their own or an employer's, in an asset valued at more money than many of the Member's constituents will ever see.
- The Committee should develop new regulations to address the frequent occurrence of Members evading the disposition of matters.
- Financial dealings between Members and outside entities is only going to become more complicated. The line between compensation and investment is deliberately blurry and will likely become more so. The Committee should develop regulations using a broad framework to identify conflicts that is not limited to the relationships and financial instruments in use today, which may not be in use tomorrow.
- While we support the Committee in creating an environment for Members to preemptively seek guidance without fear of reproof, when the Committee fails to sanction a Member because of cooperation and candor in an investigation initiated by the Committee, the Committee incentivizes Members to break the rules but be nice when caught. The Committee should establish minimum sanctions, such as a letter of reproof, when Members are found to have violated a rule in an investigation initiated by the Committee.
- Conflicts of interest arise just the same when a benefit accrues to a Member's spouse. While the Committee may not be able to place restrictions on the positions that can be held by a Member's spouse, the Committee can impose requirements on the Member to not take actions that would benefit the spouse's interests, to limit the information the Member may share with their spouse on legislative matters, and to create public disclosures of the spouse's positions to ensure the public is aware of a conflict that cannot be prevented.
- We additionally recommend the placement of time limits upon which the Committee's good graces can be relied on to avoid sanctions.

The details of the particular ethics cases that led us to make these recommendations follow:

In 2018, Rep. Roger Williams introduced an amendment that by the Member's own logic could have benefited the car dealerships valued at upwards of \$50 million that he still owned at the time. Although the Code of Conduct outright prohibits the introduction of an "earmark, a limited tax benefit, or a limited tariff benefit" if the Member or their spouse has a "financial interest" in it (CoC 17(5)), rules prohibiting other legislative actions in which the Member has a financial interest are less clear and hinge on such details as whether the Member personally "conceived of [] or drafted the amendment" (H.Rpt. 271, 115th Congress) — factors that are in our view unrelated to whether a conflict of interest exists and ignore the reality that all substantive legislative work is routinely conducted by staff and outside experts *on behalf of* Members.

Recommendation: A Member's personal involvement in legislative minutia is not a necessary condition to establish a conflict of interest under a reasonable person standard. A conflict of interest exists regardless of whether a Member conceives of and executes any part of the action

themselves, and the perception of a conflict may exist regardless of whether the action is done knowingly. When a conflict of interest rises to the level of millions of dollars, a large sum indeed in the eyes of most Americans, the buck must stop with the Member. The Member must be held accountable for the official actions taken by their office.

In 2016, Rep. David McKinley received a letter of reproof for remaining a named partner in his prior business after being elected to Congress. The House Committee on Ethics concluded that McKinley violated House rules and issued a letter of reproof after McKinley sold the business with its name intact, allowing the business to trade on the Member's name, rather than disassociate his name from the business. The perception of a conflict of interest still remains in this case, and the business continues to trade on the representative's name.

Recommendation: The Committee should develop new regulations to address the frequent occurrence of Members evading the disposition of matters.

In 2015, former Rep. Alan Grayson was investigated for numerous alleged violations, the majority of which relate to his leadership and ownership of a hedge fund and law firms, omissions from his annual financial disclosure forms, and the use of official resources for unofficial purposes. The Committee's jurisdiction ended when Grayson left office before a finding was made.

Recommendation: The Committee should develop new regulations to address the frequent occurrence of Members evading the disposition of matters.

In 2012, former Rep. Phil Gingrey was investigated for a 2011 \$250,000 investment in a bank on whose behalf he advocated and on whose board he served. The Committee issued a letter of reproof in 2014. Gingrey invested in the bank's "stock warrants," a complex financial instrument that was made available to Gingrey in exchange for his board service. The Committee inexplicably dismissed the allegation that Gingrey received improper compensation.

Recommendation: Financial dealings between Members and outside entities is only going to become more complicated. The line between compensation and investment is deliberately blurry and will likely become more so. The Committee should develop regulations using a broad framework to identify conflicts that is not limited to the relationships and financial instruments in use today, which may not be in use tomorrow.

In 2012, former Rep. Shelley Berkley was investigated for advocating for programs in which she had a financial interest from 2008-2010. The Committee found that the representative had indeed advocated for some programs in which she had a financial interest but because of "Berkley's cooperative approach to this process and her candor" the Committee declined to take even its lowest form of sanction and did not issue a letter of reproof (H.Rpt. 716, 112th Congress).

Recommendation: While we support the Committee in creating an environment for Members to preemptively seek guidance without fear of reproof, when the Committee fails to sanction a Member because of cooperation and candor in an investigation initiated by the Committee, the Committee incentivizes Members to break the rules but be nice when caught. The Committee should establish minimum sanctions, such as a letter of reproof, when Members are found to have violated a rule in an investigation initiated by the Committee.

In 2014, former Rep. Thomas Petri was investigated for performing official work on behalf of companies in which he had a financial interest of upwards of \$750,000 from 2008 to 2013. And in 2013, Rep. Markwayne Mullin was investigated for receiving excess outside earned income, endorsing companies or products as part of outside employment, and serving as a board member or officer of his family's businesses. In both cases, the Committee declined to sanction the Members because the Members had been in consultation with the Committee and substantially followed the Committee's guidance. In Mullin's case, the Committee additionally identified an improper payment from the company to a joint account held by Mullin and his wife and directed that it be returned (upon which, the matter was closed). We were struck by the Committee's acceptance that a transfer of an asset to a spouse was a meaningful distinction, and by the extraordinarily long time it took Mullin to exit his family business and for the Committee to resolve the case, relative to the already short two-year duration of a Member's term in office.

Recommendation: Conflicts of interest arise just the same when a benefit accrues to a Member's spouse. While the Committee may not be able to place restrictions on the positions that can be held by a Member's spouse, the Committee can impose requirements on the Member to not take actions that would benefit the spouse's interests, to limit the information the Member may share with their spouse on legislative matters, and to create public disclosures of the spouse's positions to ensure the public is aware of a conflict that cannot be prevented. We also recommend the placement of time limits upon which the Committee's good graces can be relied on to avoid sanctions.

In 2009, Rep. Maxine Waters was investigated for a conflict of interest with respect to meetings with a bank in which she had a financial interest of approximately \$350,000. The Committee concluded that Waters' chief of staff was at fault for creating the appearance of conflict, but Waters was not.

Recommendation: Although the source of the conflict of interest in this case was a financial interest, lessons can be learned that apply to other forms of conflicts of interest. Once again, when a conflict of interest rises to the level of hundreds of thousands of dollars, a large sum indeed in the eyes of most Americans, the buck must stop with the Member. The Member must be held accountable for the official actions taken by their office.

Thank you for your consideration. I would be happy to discuss these issues further.

A handwritten signature in black ink, reading "Joshua Tauberer". The signature is fluid and cursive, with a long horizontal stroke at the end.

Joshua Tauberer
President
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